



4310-05-P

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 901**

**[SATS No. AL-078-FOR; Docket ID: OSMRE-2015-0005;  
S1D1S SS08011000 SX064A000 178S180110;  
S2D2S SS08011000 SX064A000 17XS501520]**

#### **Alabama Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions clarifying that the venue for appeals of Alabama Surface Mining Commission decisions resides in the Circuit Court of the county in which the agency maintains its principal office. Alabama is revising its program to be no less

effective than the Federal regulations and to improve operational efficiency.

**DATES:** The effective date is [Insert date 30 days after date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Bill Joseph, Acting Director,  
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**SUPPLEMENTARY INFORMATION:**

- I. Background on the Alabama Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Procedural Determinations

**I. Background on the Alabama Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface

coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, Federal Register (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15 and 901.16.

## **II. Submission of the Amendment**

By letter dated June 12, 2015 (Administrative Record No. AL-0666), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.) at its own initiative.

We announced receipt of the proposed amendment in the October 5, 2015, Federal Register (80 FR 60107). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 4, 2015. We received four public comments (Administrative Record No. AL-0666-03) that are addressed in the Public

Comments section of part **IV. Summary and Disposition of Comments.**

### **III. OSMRE's Findings**

We are approving the amendment as described below. The following are the findings we made concerning Alabama's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at [www.regulations.gov](http://www.regulations.gov).

#### **1. Code of Alabama Section 9-16-79 Hearing and Appeals**

Alabama added new language clarifying that procedures for the Alabama Surface Mining Commission are governed by this section of the Alabama Code because the Alabama Surface Mining Commission (ASMC) is within the jurisdiction of the Alabama Surface Mining Act and the procedures for hearings and appeals may be no less effective than the Federal counterpart. This clarification is necessary to distinguish this article of the code from other sections of the Alabama Code that are exclusively governed by the Alabama Administrative Procedure Act and have no impact upon the implementation of the Alabama Surface Mining Act.

We find that Alabama's clarification does not make its rules or regulations less effective than, or inconsistent with, the Federal requirements. Therefore, we are approving Alabama's revision.

2. Code of Alabama Section 9-16-79 Hearing and Appeals; Procedures (4)b.

Alabama made edits and added new language to this paragraph clarifying that the venue for appeals of Alabama Surface Mining Commission decisions resides in the Circuit Court of the county in which the agency maintains its principal office.

We find that Alabama's edits and clarifications do not make its rules inconsistent with the requirements of SMCRA section 526(e). Therefore, we are approving Alabama's revisions.

#### **IV. Summary and Disposition of Comments**

##### Public Comments

We asked for public comments on the amendment. As noted in Section II, we received four comments, which generally focused on two issues. The comments received are discussed below.

First, the commenters alleged that the proposed program amendment violates the venue-provisions of SMCRA as they relate to actions seeking judicial review of final decisions. Two of the commenters cited section 520(c)(1) as support for this comment. That provision states that citizen suits “may be brought only in the judicial district in which the surface coal mining operation complained of is located.” 30 U.S.C. 1270(c)(1).

Contrary to the commenters’ assertion, this change to Alabama’s program does not violate section 520(c)(1) of SMCRA. Even with the program amendment, citizen suits may still be filed by any person having an interest in the judicial district in which the surface coal mining operation complained of is located. Final decisions of the ASMC cannot be the subject of citizen suits. Instead, challenges to final decisions of the ASMC are challenged under the Alabama counterpart to section 526 of SMCRA. In contrast to section 520(c)(1), section 526(e) of SMCRA provides that an “[a]ction of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law.” Section 526(e) also makes clear that its judicial review provisions do not extend to citizen suits under section 520. 30 U.S.C. 1276(e) (“the availability of such review shall not be construed to limit the operation of the rights established in section 520 except as provided therein.”). Because the county in which the ASMC maintains its principal office is a court of competent jurisdiction in Alabama, it is not inconsistent with SMCRA for Alabama to specify that all actions challenging its decisions must be brought there.

Second, the commenters alleged that requiring judicial review of ASMC final decisions in the circuit court of the county in which the commission maintains its principal office would unfairly limit the rights of citizens, would be difficult and expensive for citizens, and would provide for potential bias based upon industry and politics.

We understand the citizens' concerns, but we do not find that they make the Alabama program inconsistent with SMCRA. For example, on the federal level, when a citizen brings a lawsuit in the "judicial district in which the surface coal mining operation complained of is located," the judicial district may be made up of multiple counties or even an entire state. Even in these situations, the litigation often occurs in a county that is different than the county where either the citizen resides or the surface coal mining operation is located. Therefore, it is not inconsistent with SMCRA that the venue is located away from the citizen's county or residence or the location of the surface coal mining operation. Because our role is solely to determine whether Alabama's proposed amendment is consistent with SMCRA—and it is—we have no basis to disapprove the amendment based on the concerns raised by the commenters.

#### Federal Agency Comments

On June 26, 2015, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL-0666-03). We

did not receive any comments.

#### Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on June 26, 2015, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. AL-0666-03). The EPA did not respond to our request.

#### State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 26, 2016, we requested comments on Alabama's amendment (Administrative Record No. AL-0666-03), but neither the SHPO nor the ACHP responded to our request.

#### **V. OSMRE's Decision**



Based on the above findings, we approve the amendment Alabama sent us on June 12, 2015 (Administrative Record No. AL-0666).

To implement this decision, we are amending the Federal regulations, at 30 CFR Part 901, that codify decisions concerning the Alabama program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

## **VI. Procedural Determinations**

### Executive Order 12630 - Takings

This rulemaking does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

### Executive Order 12866 - Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of state program amendments is exempted from OMB review under

Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3(a) of Executive Order 12988. The Department determined that this Federal Register notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency reviews its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this Federal Register notice and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Alabama drafted.

Executive Order 13132 - Federalism

This rule is not a “[p]olicy that [has] Federalism implications” as defined by section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government.”

Instead, this rule approves an amendment to the Alabama program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in sections 2 and 3 of the Executive Order and with the principles of cooperative federalism set forth in SMCRA. See, e.g., 30 U.S.C. 1201(f). As such, pursuant to section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is “in accordance with” the requirements of SMCRA and is “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

#### Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rulemaking on federally recognized Indian tribes and have determined that the rulemaking does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

#### Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 of May 18, 2001, requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rulemaking is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### National Environmental Policy Act

This rulemaking does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

#### Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rulemaking would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### Small Business Regulatory Enforcement Fairness Act

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rulemaking: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

### Unfunded Mandates

This rulemaking will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

### **List of Subjects in 30 CFR Part 901**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 3, 2018

Alfred L. Clayborne, Regional Director

Mid-Continent Region

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

### **PART 901 - ALABAMA**

1. The authority citation for part 901 continues to read as follows:

**Authority:** 30 U.S.C. 1201 et seq.

2. Section 901.15 is amended in the table by adding an entry FOR “ASMCRA 9-16-79 and 9-16-79(4)b” in chronological order by “Date of final publication” to read as follows:

**§901.15 Approval of Alabama regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * June 12, 2015	* * <b><u>[Insert date of publication in the Federal Register]</u></b>	* * ASMCRA 9-16-79 and 9-16-79(4)b.

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